

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

JUN 30 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of Sections 3(n))	GN Docket No. 93-252
and 332 of the Communications)	
Act)	
)	
Regulatory Treatment of Mobile)	
Services)	

**SPRINT CORPORATION'S REPLIES TO
 OPPOSITIONS TO PETITIONS FOR RECONSIDERATION**

Sprint Corporation ("Sprint"), on behalf of the United and Central Telephone Companies, Sprint Communications Company L.P., and Sprint Cellular, respectfully replies to the Opposition of Nextel Communications, Inc. ("Nextel") to Petitions for Reconsideration of the Second R&O.¹

Nextel argues that the Commission contradicted itself in granting the same degree of regulatory forbearance to cellular licensees as it granted to other CMRS providers.² In support of its argument, Nextel points out that the Commission previously determined that the cellular market is not competitive and that cellular licensees, unlike other CMRS providers, are dominant

1. Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994) ("Second R&O").

2. While not entirely clear, it appears that Nextel's argument is in support of MCI's claim that the Commission's decision to forbear from imposing a tariffing obligation for CMRS providers should be reconsidered. See, MCI Petition for Clarification and Partial Reconsideration, filed May 19, 1994 at pp 2-6.

No. of Copies rec'd 0+5
 List A B C D E

carriers with market power.³ Accordingly, Nextel claims that it was improper to grant the same degree of regulatory forbearance to cellular licensees as to other CMRS providers.

Rather, Nextel argues that the Commission should have exercised its forbearance authority based solely on an analysis of market power and competitive circumstances. Such an analysis, coupled with the Commission's finding that cellular licensees, unlike other CMRS providers, have market power would require the Commission to establish a bifurcated regulatory scheme with two classes of CMRS providers. One class would consist of dominant CMRS providers for which the Commission should not forbear from enforcing Title II obligations and the other class would consist of non-dominant CMRS providers.

Nextel is wrong. The Commission's forbearance analysis and final determination are consistent with the provisions of the Budget Act. The analysis started with the test specified in the Budget Act. The test authorizes Commission forbearance from enforcement of most Title II obligations if the Commission finds that enforcement is not necessary to ensure reasonable and nondiscriminatory rates or to protect consumers, and that

3. Nextel at p 6.

forbearance is consistent with the public interest.⁴ The Commission noted that a review of market power is part of the public interest analysis. However, it is clear that this is only one part of the Budget Act's multipart forbearance test and not, as Nextel argues, the sole determinant of whether or not to forbear.⁵

In conducting the public interest analysis, the Commission decided that cellular service was different from other CMRS and analyzed the status of cellular market power separately from other CMRS:

We conclude that, for purposes of evaluating the level of competition in the CMRS marketplace, the record does not support a finding that all services should be treated as a single market. Thus, we will proceed with an analysis that focuses on ~~each~~ of the various commercial mobile radio services currently offered, and about to be offered [Emphasis added.]⁶

Accordingly, the Commission conducted its forbearance analysis of the cellular market as if this market was separate and distinct from other CMRS markets. The Commission determined that, notwithstanding the fact that cellular services are not fully competitive, "the current state of competition regarding

4. Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), Pub. L. No. 103-66, title VI, at Section 6002(b)(2)(A) codified at 47 U.S.C. Section 332(c)(1)(a)(i)-(iii).

5. Second R&O at par. 125.

6. Id. at par. 136.

cellular services does not preclude our exercise of forbearance authority."⁷

The Commission's analysis and conclusion are in accord with the Congressional intent set out in the Budget Act -- to foster "regulatory symmetry among similar mobile service."⁸ The Commission's finding that the state of cellular competition was different from that of other CMRS providers did not require the Commission to grant different regulatory forbearance for cellular licensees than for other CMRS providers or to create a dominant and separate non-dominant class of CMRS providers. While Congress granted the Commission the flexibility to classify CMRS providers and subject different classes to different degrees of regulatory forbearance, Congress did not require the Commission to create such classifications.⁹

7. Id. at par. 175.

8. Id. at par. 2.

9. As the Commission stated in the Second R&O, at par. 155: "In the Notice we tentatively concluded that the Commission has the authority to establish classes or categories of CMRS. The Conference Report indicates that Congress intended to provide this flexibility, but did not mandate such differential regulation."

In conclusion, Sprint urges the Commission to reject the arguments of Nextel regarding reconsideration of forbearance for cellular licensees.

Respectfully submitted,

SPRINT CORPORATION

by Jay C. Keithley
Jay C. Keithley
Leon Kestenbaum
1850 M Street, N.W.
Suite 1100
Washington, DC 20036
(202) 857-1030

Kevin Gallagher
8725 Higgins Road
Chicago, IL 60631
(312) 399-2348

Craig T. Smith
P.O. Box 11315
Kansas City, MO 64112
(913) 624-3065

Its Attorneys

June 30, 1994

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 30th day of June, 1994, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Sprint Corporation's Replies to Oppositions to Petitions for Reconsideration" in the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252 filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.


Melinda L. Mills

Robert B. Kelly
Douglas L. Povich
KELLY, HUNTER, MOW & POVICH, PC
1133 Connecticut Avenue, NW
Washington, DC 20036
Counsel for Advanced Mobilecomm Technologies, Inc.
Digital Spread Spectrum Technologies, Inc.

John L. Bartlett
Robert J. Butler
Ilene T. Weinreich
WILEY, REIN & FIELDING
1776 K Street, NW
Washington, DC 20006
Counsel for Aeronautical Radio, Inc.

Richard M. Tettelbaum
Gurman, Kurtis, Blask & Freedman, Chartered
1400 16th Street, NW, Suite 500
Washington, DC 20036
Counsel for Allcity Paging, Inc.

Wayne V. Black
Tamara Y. David
Keller and Heckman
1001 G Street, NW, Suite 500 West
Washington, DC 20001
Counsel for the American Petroleum Institute

Alan R. Shark
American Mobile Telecommunications Assoc, Inc.
1835 K Street, NW, Suite 203
Washington, DC 20006

Elizabeth R. Sachs
Lukas, McGowan, Nace & Gutierrez
1819 H Street, NW, Suite 700
Washington, DC 20006
Counsel for American Mobile Telecommunications Assoc, Inc.

JoAnne G. Bloom
Frank Michael Panek
Ameritech
2000 W. Ameritech Center Drive
Hoffman Estates, IL 60195

Lon C. Levin
AMSC Subsidiary Corporation
10802 Park Ridge Boulevard
Reston, VA 22091

Bruce D. Jacobs
Glenn S. Richards
Fisher, Wayland, Cooper and Leader
2001 Pennsylvania Avenue, NW, Suite 400
Washington, DC 20006-1851
Counsel for AMSC Subsidiary Corp.

Carl W. Northrop
Bryan Cave
700 13th Street, NW
Suite 700
Washington, DC 20005-3960

Thomas J. Keller
Michael S. Wroblewski
Verner, Liipfert, Bernhard, McPherson and Hand
901 15th Street, NW, Suite 700
Washington, DC 20005

John D. Lane
Robert M. Gurss
Wilkes, Artis, Hedrick and Lane
1666 K Street, NW
Washington, DC 20006
Counsel for Assoc. of Public Safety Communications
Officials-International, Inc.

John T. Scott, III
Crowell and Moring
1001 Pennsylvania Ave., NW
Washington, DC 20004
Counsel for Bell Atlantic

John M. Goodman
Bell Atlantic
1710 H Street, NW
Washington, DC 20006

William L. Roughton, Jr.
Bell Atlantic Personal Communications, Inc.
1310 N. Courthouse Road
Arlington, VA 22201

S. Mark Tuller
Bell Atlantic Mobile Systems, Inc.
180 Washington Valley Road
Bedminster, NJ 07921

William B. Barfield
Jim Llewellyn
BellSouth Corp.
1155 Peachtree Street, NE
Atlanta, GA 30367-6000

Charles P. Featherstun
David G. Richards
BellSouth Corp.
1133 21st Street, NW
Washington, DC 20036

Michael F. Altschul
Cellular Telecommunications Industry Assoc.
Two Lafayette Centre, Third Floor
1133 21st Street, NW
Washington, DC 20036

Philip L. Verveer
Sue Blumenfeld
Jennifer A. Donaldson
Willkie Farr and Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036
Counsel for Cellular Telecommunications Industry Assoc.

Frederick M. Joyce
Jill M. Lyon
Joyce and Jacobs
2300 M Street, NW, Suite 130
Washington, DC 20037
Counsel for Celpage, Inc., Network USA, Denton Enterprises,
Copeland Communications and Electronics, Inc., Nationwide
Paging

Michael R. Carper
CenCall Communications Corp.
3200 Cherry Creek Drive South
Denver, CO 80110

Randall B. Lowe
Mary E. Brennan
Jones, Day, Reavis and Pogue
1450 G. Street, NW
Washington, DC 20005
Counsel for CelCall Communications Corp.

W. Bruce Hanks
Century Cellunet, Inc.
100 Century Park Avenue
Monroe, LA 71203

Leonard J. Kennedy
Laura H. Phillips
Jonathan M. Levy
Dow, Lohnes & Albertson
1255 23rd Street, NW, Suite 500
Washington, DC 20037

Werner K. Hartenberger
Laura H. Phillips
Dow, Lohnes & Albertson
1255 23rd Street, NW, Suite 500
Washington, DC 20037

Russell H. Fox
Gardner, Carton & Douglas
1301 K Street, NW
Suite 900, East Tower
Washington, DC 20005
Counsel for EF Johnson Co.

Kathy L. Shobert
General Communications, Inc.
888 16th Street, NW, Suite 600
Washington, DC 20006

Michael Hirsch
Geotek Industries, Inc.
1200 19th Street, NW, Suite 607
Washington, DC 20036

David A. Reams
Grand Broadcasting Corp.
P.O. Box 502
Perrysburg, OH 43552

Gail L. Polivy
GTE Service Corp.
1850 M Street, NW
Suite 1200
Washington, DC 20036

Ashton R. Hardy
Bradford D. Carey
Marjorie R. Esman
Hardy & Carey, LLP
111 Veterans Boulevard
Suite 255
Metairie, LA 70005

Richard M. Tettelbaum
Gurman, Kurtis, Blask, & Freedman
1400 16th Street, NW, Suite 500
Washington, DC 20036
Counsel for Illinois Valley Cellular RSA 2 Partnerships

Frederick J. Day
1110 N. Glebe Road, Suite 500
Arlington, VA 22201-5720
Counsel for Industrial Telecommunications Assoc., Inc.

Rodney L. Joyce
Ginsburg, Feldman and Bress
1250 Connecticut Avenue, NW
Washington, DC 20036
Counsel for In-Flight Phone Corp.

William R. Gordon
In-Flight Phone Corp.
1146 19th Street, NW, Suite 200
Washington, DC 20036

David L Nace
Lukas, McGowan, Nace & Gutierrez, Chtd.
1819 H Street, NW, 7th Floor
Washington, DC 20006
Counsel for Liberty Cellular, Inc.

Shirley S. Fujimoto
Brian Turner Ashby
Keller and Heckman
1001 G Street, NW
Suite 500 West
Washington, DC 20001
Counsel for Lower Colorado River Authority

R. Gerard Salemme
Cathleen A. Massey
McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, NW, 4th Floor
Washington, DC 20036

Howard J. Symons
Gregory A. Lewis
Kecia Boney
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo
701 Pennsylvania Ave., NW, Suite 900
Washington, DC 20004
Counsel for McCaw Cellular

Larry Blosser
Donald J. Elardo
MCI Telecommunications Corp.
1801 Pennsylvania Avenue NW
Washington, DC 20006

Henry M. Rivera
Larry S. Solomon
Jay S. Newman
Ginnsburg, Feldman & Bress
1250 Connecticut Avenue, NW
Washington, DC 20036
Counsel for Metricom, Inc.

Thomas Gutierrez
Lukas, McGowan, Nace & Gutierrez
1819 H Street, NW, Suite 700
Washington, DC 20006
Counsel for Mobile Telecommunication Technologies Corp.

Michael D. Kennedy
Mary Brooner
Motorola, Inc.
1350 I Street, NW
Washington, DC 20005

Russell H. Fox
Susan HR Jones
Gardner, Carton & Douglas
1301 K Street, NW
Suite 900, East Tower
Washington, DC 20005

David E. Weisman
Alan S. Tilles
Meyer, Faller, Weisman and Rosenberg, PC
4400 Jennifer Street, NW, Suite 380
Washington, DC 20015
Counsel for National Assoc. of Business and Educational
Radio

Joel H. Levy
Cohn and Marks
1333 New Hampshire Avenue, NW
Suite 600
Washington, DC 20036
Counsel for National Cellular Resellers Assoc.

David Cosson
L. Marie Guillory
National Telephone Cooperative Assoc.
2626 Pennsylvania Ave., NW
Washington, DC 20037

Thomas J. Casey
Simone Wu
Timothy R. Robinson
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, NW
Washington, DC 20005
Counsel for New Par

William J. Cowan
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223

G. A. Gorman
North Pittsburgh Telephone Co.
4008 Gibsonia Road
Gibsonia, PA 15044-9311

Mary McDermott
United States Telephone Assoc.
1401 H Street, NW, Suite 600
Washington, DC 20005-2136

Brian D. Kidney
Pamela J. Riley
Kathleen Abernathy
Pactel Corporation
2999 Oak Road, MS 1050
Walnut Creek, CA 94569

Anne P. Jones
David A. Gross
Kenneth G. Starling
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004
Counsel for Pactel

Mark A. Stachiw
Pactel Paging
Suite 800
12221 Merit Drive
Dallas, TX 75251

Carl W. Northrop
Bryan Cave
Suite 700
700 13th St., NW
Washington, DC 20005

Nextel Communications, Inc.
Robert S. Foosaner, Esq.
Lawrence R. Krevor, Esq.
601 13th St., NW
Suite 1110 South
Washington, DC 20005

NYNEX Corporation
Edward R. Wholl
Jacqueline E. Holmes Nethersole
Katherine S. Abrams
120 Bloomingdale road
White Plains, NY 10605
Counsel for NYNEX

James P. Tuthill
Betsy S. Granger
140 New Montgomery St., Rm 1525
San Francisco, California 94105
Counsel for Pacific and Nevada Bell

James L. Wurtz
1275 Pennsylvania Ave., NW
Washington, DC 20004
Counsel for Pacific and Nevada Bell

David L. Nace
Lukas, McGowan, Nace & Gutierrez, Chtd.
1819 H Street, NW, Seventh Floor
Washington, DC 20006
Counsel for Pacific Telecom Cellular, Inc.

Phillip L. Spector
Susan E. Ryan
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, NW
Suite 1300
Washington, DC 20036
Counsel for Pagemart, Inc.

Judith St. Ledger-Roty
Marla Spindel
Reed Smith Shaw & McClay
1200 18th Street, NW
Washington, DC 20036
Counsel for Paging Network, Inc.

Peter Arth, Jr
Edward w. O'Neill
Ellen S. Levine
505 Van Ness Avenue
San Francisco, CA 94102
Counsel for the People of the State
of CA and the Public Utilities
Commission of the State of CA

Personal Radio Steering Group Inc.
Corwin D. Moore, Jr.
P.O. Box 2851
Ann Arbor, Michigan 48106

David L. Nace
Marci E. Greenstein
Lukas, McGowan, Nace & Gutierrez, Chtd.
1819 H Street, NW Seventh Floor
Washington, DC 20006
Counsel for Pioneer Telephone Cooperative, Inc.

Louis Gurman
Richard M. Tettelbaum Coleen M. Egan
Gurman, Kurtic, Blask & Freedman
1400 16th St, NW., 500
Washington, DC 20036
Counsel for PN Cellular, Inc. and its Affiliates

Albert H. Kramer
Robert F. Aldrich
David B. Jeppsen
Keck, Mahin & Cate
1201 New York Avenue, NW
Washington, DC 2005-3919
Counsel for PTC Cellular

Public Service Commission of
the District of Columbia
Daryl L. Avery
Peter G. Wolfe
450 Fifth Street, NW
Washington, DC 20001

Henry Goldberg
Joanthan L. Wienter
Daniel S. Goldberg
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, NW
Washington, DC 20036
Counsel for RAM Mobile Data USA
Limited Partnership

Judith St. Ledger-Roty
J. Laurent Scharff
Matthew J. Harthun
Reed Smith Shaw & McClay
1200 18th Street, NW
Washington, DC 20036

C. Douglas Jarrett
Michael R. Bennet
Keller and Heckman
1001 G Street, NW
Suite 500 West
Washington, DC 20001
Counsel for RIG Telephones, Inc.

William J. Franklin
1919 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006-3404
Counsel for Roamer One, Inc.

Michael J. Shortley, III
Rochester Telephone Corporation
180 South Clinton Avenue
Rochester, New York 14646

Rockwell International Corporation
Linda C. Sadler
1745 Jefferson Dqvis Highway
Arlington, VA 22202

Rural Cellular Association
David L. Jones
2120 L Street NW, Suite 810
Washington, DC 20037

Southwestern Bell Corporation
James D. Ellis
William J. Free
Paula J. Fulks
175 E. Houston, Rm. 1218
San Antonio, Tx 78205

Southwestern Bell Mobile Systems, Inc.
Wayne Watts
Linda M. Hood
17330 Prestion Rd, Suite 100A
Dallas, Tx 75252

Telephone and Data Systems, Inc.
George Y. Wheeler
Koten & Naftalin
1150 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036

The Telmarc Group, Inc., and
Telmarc Telecommunications, Inc.
Terrence P. McGarty
24 Woodbine Rd
Florham Park, NJ 07932

Telocator
Thomas A. Stroup
Mark Golden
1019 19th Street, NW
Suite 1100
Washington, DC 20036

Norman P. Leventhal
Raul R. Rodriguez
Stephen D. Baruch
Leventhal, Senter & Lerman
2000 K St., NW Suite 600
Washington, DC 20006-1809
Counsel for TRW Inc.

Jeffrey S. Bork
US West
1020 19th St., NW Suite 700
Washington, Dc 20036

Jeffrey L. Sheldon
Sean A. Stokes
Utilities Telecommunications Council
1140 Connecticut Ave., NW Suite 1140
Washington, DC 20036

Raymond G. Bender, Jr.
Michael D. Basile
Stemen F. Morris
Sow, Lohnes & Albertson
1255 Twenty-third St., NW Suite 500
Washington, DC 20037
Counsel for Vanguard Cellular Systems, Inc.

Stuart F. Feldstein
Robert J. Keller
Steven N. Teplitz
Fleischman and Walsh
1400 Sixteenth St., NW
Washington, DC 20036
Counsel for Time Warner Telecommunications

Martin W. Bercomici
Keller and Heckman
1001 G St., NW Suite 500 West
Washington, DC 20001
Counsel for Waterway Communications System, Inc.

Richard Metzger, Acting Chief*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

Greg Vogt, Chief*
Tariff Division
Federal Communications Commission
1919 M Street, NW, Room 518
Washington, DC 20554

ITS*
1919 M Street, NW, Room 246
Washington, DC 20554

Joel Ader*

Belcore

2101 L Street, NW, 6th Floor

Washington, DC 20037

* Indicates Hand Delivery